

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DEC 7 2005

U. S. DISTRICT COURT
W. DIST. OF N. C.

W. WELLS VAN PELT, JR.)
Plaintiff,)
v.)
UBS FINANCIAL SERVICES INC.,)
Defendant.)

Case No.:
05CV447-K

MOTION TO VACATE

Defendant UBS Financial Services Inc. (“UBS”), pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, et seq., moves this Court to vacate the award rendered in the National Association of Securities Dealers (“NASD”) Dispute Resolution arbitration proceeding styled W. Wells Van Pelt, Jr. v. UBS Financial Services Inc., et al., NASD Dispute Resolution Arbitration Number 04-00619 (the “Award”), on the following grounds:

- (1) there was evident partiality in the arbitrators;
- (2) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy;
- (3) the arbitrators exceeded their powers;
- (4) the Award is irrational and evidences a manifest disregard of the law;
- (5) the Award violates well-established public policy; and
- (6) the Award fails to draw its essence from the applicable agreements.

UBS will file a memorandum of law with exhibits in further support of this Motion, which UBS incorporates by reference as if set forth in full herein.¹

¹ The Court waived Local Civil Rule 7.2 with respect to UBS’ memorandum of law in support of this Motion, which would have required UBS to file its memorandum of law contemporaneously with the filing of this Motion, during a conference call with the parties on December 2, 2005.

WHEREFORE, defendant UBS Financial Services Inc. prays that this Court will enter an Order vacating the award rendered in the National Association of Securities Dealers Dispute Resolution arbitration proceeding styled W. Wells Van Pelt, Jr. v. UBS Financial Services Inc., et al., NASD Dispute Resolution Arbitration Number 04-00619.



George C. Covington
William O. L. Hutchinson
Erika A. Olson
KENNEDY COVINGTON LOBDELL &
HICKMAN, LLP
Hearst Tower, 47th Floor
214 N. Tryon Street
Charlotte, North Carolina 28202
Telephone: (704) 331-7400
Facsimile: (704) 353-3132

Attorneys for Defendant

CERTIFICATE OF SERVICE

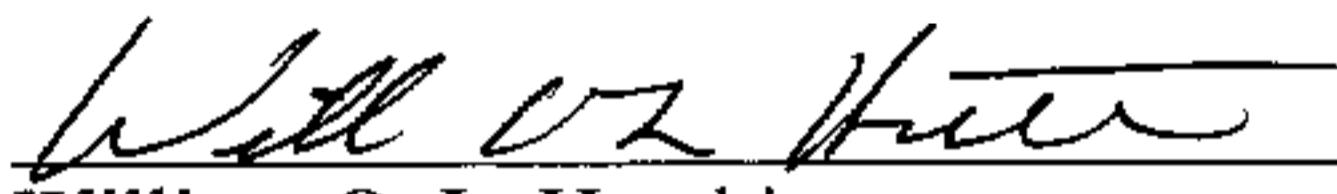
I hereby certify that a copy of the foregoing document was this date served upon all known counsel of record by placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address as follows:

Andrew O. Whiteman
Hartzell & Whiteman, L.L.P.
2626 Glenwood Avenue, Suite 500
Raleigh, North Carolina 27608

Sarah G. Anderson
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-7595

Charles P. Murdter
1050 Connecticut Avenue
Suite 1000
Washington, DC 20036

Charlotte, North Carolina, this 7th day of December, 2005.


William O. L. Hutchinson